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Chairman: Mr. Wenaweser (Liechtenstein)

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The meeting was called to order at 10.30 a.m.

Agenda item 109: Human rights questions

(continued)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms *(continued)* (A/57/769, A/C.3/57/L.90, A/C.3/57/L.91)

1. **Mr. Corell** (Under-Secretary-General for Legal Affairs and Legal Counsel) introduced the Report of the Secretary-General on Khmer Rouge trials (A/57/769), submitted pursuant to General Assembly resolution 57/228. After a brief background survey, the report gave a detailed account of the resumed negotiations. In view of the mandate given to him by the General Assembly, the Secretary-General considered that the resumed negotiations should take as their point of departure the draft agreement which had been under discussion during the previous negotiations between the United Nations and the Government of Cambodia, but was in need of adjustments designed to ensure that the structure and organization of the prospective Extraordinary Chambers would be simplified in the interests of greater credibility, earlier establishment, and expeditious and efficient operation. The Secretary-General's efforts in that connection had not been uniformly successful: the Government of Cambodia, supported by some Member States, had refused to consider his proposals, which would have required it to make changes to its Law of 10 August 2001 on the structure and organization of the Extraordinary Chambers, with the exception of a proposal that the number of instances therein should be reduced from three to two. Aware as he had been that the Government of Cambodia was not prepared to yield in the matter, the Secretary-General had had to negotiate a draft agreement that did not provide for any change to the structure and organization of the Extraordinary Chambers, but none the less did contain a number of positive elements. In the first place, the proposed text, if adopted, would constitute a legally binding international agreement between the United Nations and Cambodia, and as such would apply as law within Cambodia. In the second place, the number of instances would be two instead of three. In the third place, some of the provisions of the draft agreement would go much further toward ensuring international

standards of justice, fairness and due process of law than the provisions of the agreement that had been under discussion during the earlier negotiations. However, some concerns remained. The Secretary-General's Special Representative for human rights in Cambodia had consistently found there to be little respect on the part of Cambodian courts for the most elementary features of the right to a fair trial, and consequently it was to be feared that some of the provisions of the draft agreement might not be fully respected by the Extraordinary Chambers. Furthermore, in Cambodia the executive routinely interfered with the independence of the judiciary, as had been noted by the General Assembly in its resolution 57/225, the Commission on Human Rights in its resolution 2003/79 and the Committee against Torture. Consequently, the Secretary-General would have preferred the appointment of international judges, who would have been less likely to be influenced by, or yield to, pressure from that quarter. In addition, it would then not have been necessary to apply the problematic "supermajority" formula. The Under-Secretary-General recalled the sad case of Mr. Justice Sok Setha Mony, who had recently been murdered after having sentenced a former senior Khmer Rouge official to life imprisonment, and noted that if an agreement were reached, any deviation by the Government from its obligations could lead to the United Nations withdrawing its cooperation and assistance. Referring to the draft resolution currently under consideration, he said that the sponsors had not sought to meet with him and the Controller, despite the fact that the Secretary-General had asked them to do so. In the event the draft resolution should be adopted, the international judges, the international co-prosecutor and the international co-investigating judge would be deemed to be officials of the United Nations, which would be responsible for their salaries and emoluments, in accordance with the recommendation made by the Secretary-General in paragraph 59 of his report. Once the draft resolution had been adopted, the Secretary-General would proceed to sign the draft agreement on behalf of the United Nations, and it would enter into force as soon as notification of the necessary legal arrangements had been given in writing. If, for example, the General Assembly were to decide that assistance activities should be financed from voluntary contributions, as contemplated in the draft resolution, the Secretary-General would send the required notification when sufficient contributions

were in place to fund those activities for a sustained period of time, as stated in document A/C.3/57/L.91. If the draft resolution before the Third Committee should be adopted, the Secretary-General would ask all States whether they intended to make contributions in the form of funds, personnel or services, and what the scale of those contributions would be. This would enable him to determine whether it would be feasible to establish the Extraordinary Chambers, or whether the question should be sent back to the General Assembly for consideration of other methods of financing.

Draft resolution A/C.3/57/L.90: Khmer Rouge trials

2. **Mr. Haraguchi** introduced the draft resolution on behalf of the sponsors, which had been joined by the Lao People's Democratic Republic. He urged all Member States to make contributions so that the Extraordinary Chambers could be established quickly and function effectively. His delegation hoped that the draft resolution would be adopted without a vote.

3. **The Chairman** directed the representatives' attention to document A/C.3/57/L.91, which contained the statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly. He then announced that Cambodia, Indonesia, Malaysia, Portugal and Senegal had joined the sponsors of the draft resolution.

4. **Mr. Ouch Borith** (Cambodia) said that the genocide and crimes against humanity perpetrated by the bloody Khmer Rouge regime, the exactions of which had caused the deaths of more than two million people, must not go unpunished. The Government of Cambodia had established a national tribunal to try those who had committed those crimes shortly after the country's liberation in 1979, and, at its request, the United Nations had subsequently conducted a feasibility study in 1998. The weakness of Cambodia's judiciary and legal system was a direct consequence of the damage inflicted by the Khmer Rouge upon the country's cultural, political, economic and social structure. Cambodia had therefore turned to the United Nations for assistance and had asked it to participate in the Khmer Rouge trials, which were to take place in accordance with the relevant law enacted by the Government following intensive negotiations with the United Nations. The draft resolution currently before the Committee would approve the resulting draft agreement, which would become part of Cambodia's domestic law once it had been ratified by the National

Assembly. If it entered into force, that agreement would have the binding force of an international treaty and would have to be performed by both parties, in accordance with the 1969 Vienna Convention on the Law of Treaties. There could be no doubt about the credibility of the future Extraordinary Chambers, the establishment of which would represent an historic turning-point in the field of international humanitarian law, fostering understanding of the importance of internationally accepted standards and encouraging the administration of justice on behalf of the victims, in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide. It was to be hoped that the draft resolution would be adopted by consensus.

5. **Mr. Haraguchi** (Japan) said that he saw no need for document A/C.3/57/L.91 on the programme budget implications of draft resolution A/C.3/57/L.90, since the Extraordinary Chambers were to be financed from voluntary contributions. In paragraph 2 of that document, moreover, the Secretary-General drew the Committee's attention to section VI of General Assembly resolution 45/248 B, in which the Assembly expressed concern at the tendency of its substantive Committees and other intergovernmental bodies to involve themselves in administrative and budgetary matters, whereas paragraph 3 of the draft resolution, which was directly based on General Assembly resolution 57/278, stated expressly that the expenses of the Extraordinary Chambers to be defrayed by the United Nations were to be borne by voluntary contributions from the international community, and not by the assessed contributions of the Member States. It would be of interest to know how the Secretariat had arrived at the figure of over \$19 million as the estimated cost of establishing and operating the Extraordinary Chambers. Lastly, document A/C.3/57/L.91 had been prepared taking into account the recommendation made by the Secretary-General in his report to the effect that the international judges, the international co-prosecutor and the international co-investigating judge should be deemed officials of the United Nations, but it would be premature to take a decision of that kind in the absence of fuller details. The proposed draft text should therefore be adopted, on the understanding that the General Assembly had not yet taken a decision on the status of personnel.

6. **Mr. Florent** (France) said that his delegation wished to align itself with the position of the delegation of Japan, and that the title of document A/C.3/57/L.91 was questionable.

7. **Mr. Rostow** (United States of America) said that his delegation wished to align itself fully with the statements made by the representatives of Japan and France.

8. **Mr. Correl** (Under-Secretary-General for Legal Affairs and Legal Counsel) said that he would immediately inform the Controller of the remarks made by the representatives of Japan, France and the United States of America. However, personnel recruited by the Secretary-General would necessarily be United Nations officials, the available resources would be managed in accordance with United Nations rules and regulations, regardless of whether the resources in question were voluntary contributions or not, and the Deputy Director of the Office of Administration would, of course, report to the Secretary-General. The draft resolution currently before the Committee was concerned, not with an independent legal entity, but a United Nations operation aimed at assisting the Government of Cambodia.

The meeting rose at 11.15 a.m.